

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 37, 39-44, 48, 50, 51, and 53 are pending in the present application, Claims 48 and 50 having been withdrawn.

In the outstanding Office Action, Claims 37, 39-44, 51, and 52 were rejected under 35 U.S.C. §103(a) as unpatentable over Huang et al. (U.S. Patent Publication No. 2006/0024732, hereinafter Huang) in view of Colin et al. (U.S. Patent No. 5,925,573, hereinafter Colin).

Applicants respectfully traverse the rejection of Claim 37. Claim 37 recites, *inter alia*,

attracting, with a first magnetic mechanism, the magnetic particles fixed to the analyte to a bottom of the first receptacle and forming an initial residue at the bottom of the first receptacle.

Huang and Colin, when taken in proper combination, do not disclose or suggest at least this feature of amended Claim 37.

Huang does not describe a magnetic field that attracts magnetic particles to a bottom of the first receptacle. On the contrary, the magnetic field in Huang is used to (1) “draw the MicroDiscs *into* the channel,” and/or (2) rotate the MicroDiscs.<sup>1</sup> In other words, the function of the magnetic field in Huang is to display micro particles and to rotate them.

Applying a force to bring the MicroDiscs into the channel does not necessarily involve attracting, with the magnetic field, the MicroDiscs to a bottom of the first receptacle. Attracting magnetic particles *into* a channel with a magnetic field is not the same as attracting particles to a bottom of a first receptacle with a magnetic field to form an initial residue at the

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<sup>1</sup> Huang, paragraph [0144], emphasis added.

bottom of the first receptacle. Huang does not disclose or suggest a magnetic field that provides a downward force to the MicroDiscs.

In Huang, attracting particles to the bottom and forming an initial residue at the bottom has to be avoided. (See notably the embodiment of paragraphs [00140] to [00148], where the separation of micro-particles from each other is explicitly explained.) More particularly, the end of paragraph [0140] states *"the combined effect of said magnetic force and said preferential axis.....substantially separates said micro-particles from each other."* The definition of the separation is indicated on paragraph [0041]: micro particles have to be separated in order to be identified and/or analyzed by their own coding pattern.

In other words, Huang teaches exactly the contrary to what is claimed in the invention, i.e., attracting particles to the bottom and forming an initial residue at the bottom. Separating particles is the antithesis of forming a residue.

In the framework of Huang, the fact that the sedimentation has to be avoided is clearly explained at the end of paragraph [0006], where it is mentioned that:

*"Since such particles tend to be flat objects as opposed to spherical beads, they tend to be **more prone to aggregation or overlapping**, as well as being more difficult to disperse."*

Huang does not describe a magnetic element that is used to attract the magnetic particles fixed to an analyte to a bottom of the first receptacle and to form an initial residue at the bottom of the first receptacle. Thus, Huang does not disclose the above-noted element of Claim 1.

Furthermore, Colin does not cure the deficiencies in Huang. Colin describes a method that uses a magnetic field for agglomeration and displacement of metal complexes which are the result of the incubation of a liquid sample with a reactant including metal particles. In the embodiment shown in Colin's Fig. 3, there is a well 15 for receiving a sample. At this stage, the magnetic reagent is not added. The magnetic reagent is added at

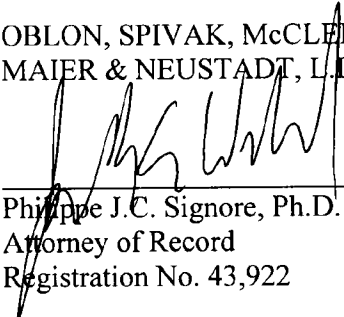
incubation wells 16.<sup>2</sup> Thus, the first well is only adapted to receive the liquid sample. The fluid division is made upstream with respect to well 15. The magnetic elements 3 in Colin are used to transfer the intermediate complexes in second wells 16a-16j towards reading wells 17.<sup>3</sup> There is no disclosure that magnetic elements 3 are used to attract the magnetic particles fixed to the analyte to a bottom of the first receptacle and to form an initial residue at the bottom of the first receptacle. Thus, Colin does not disclose the above-noted element of Claim 1.

In view of the above-noted distinctions, Applicants respectfully submit that Claim 37 (and any claims dependent thereon) patentably distinguish over Colin.

Consequently, in light of the above discussion, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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<sup>2</sup> Colin, col. 3, lines 36-43, and col. 10, lines 15-20.

<sup>3</sup> Colin, col. 10, lines 20-30.